

Federal Deposit Insurance Corporation

§ 349.8

§ 349.4(c) or that is not required pursuant to this [part] in any form of collateral.

EFFECTIVE DATE NOTE: At 80 FR 74913, Nov. 30, 2015, § 349.6 was amended by removing “[RESERVED]” wherever it appears and adding in its place “12 CFR 1.2(d)”, effective Apr. 1, 2016.

§ 349.7 Segregation of collateral.

(a) A covered swap entity that posts any collateral other than for variation margin with respect to a non-cleared swap or a non-cleared security-based swap shall require that all funds or other property other than variation margin provided by the covered swap entity be held by one or more custodians that are not the covered swap entity or counterparty and not affiliates of the covered swap entity or the counterparty.

(b) A covered swap entity that collects initial margin required by § 349.3(a) with respect to a non-cleared swap or a non-cleared security-based swap shall require that such initial margin be held by one or more custodians that are not the covered swap entity or counterparty and not affiliates of the covered swap entity or the counterparty.

(c) For purposes of paragraphs (a) and (b) of this section, the custodian must act pursuant to a custody agreement that:

(1) Prohibits the custodian from re-hypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in § 349.6(a)(2) or (b), such asset is held in compliance with this § 349.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding.

(d) Notwithstanding paragraph (c)(1) of this section, a custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral collected by a covered swap entity pursuant to § 349.3(a) or posted by a covered swap entity pursuant to § 349.3(b), the agreement requires the posting party to:

(1) Substitute only funds or other property that would qualify as eligible collateral under § 349.6, and for which the amount net of applicable discounts described in appendix B of this [part] would be sufficient to meet the requirements of § 349.3; and

(2) Direct reinvestment of funds only in assets that would qualify as eligible collateral under § 349.6, and for which the amount net of applicable discounts described in appendix B of this [part] would be sufficient to meet the requirements of § 349.3.

§ 349.8 Initial margin models and standardized amounts.

(a) *Standardized amounts.* Unless a covered swap entity's initial margin model conforms to the requirements of this section, the covered swap entity shall calculate the amount of initial margin required to be collected or posted for one or more non-cleared swaps or non-cleared security-based swaps with a given counterparty pursuant to § 349.3 on a daily basis pursuant to appendix A of this [part].

(b) *Use of initial margin models.* A covered swap entity may calculate the amount of initial margin required to be collected or posted for one or more non-cleared swaps or non-cleared security-based swaps with a given counterparty pursuant to § 349.3 on a daily basis using an initial margin model only if the initial margin model meets the requirements of this section.

(c) *Requirements for initial margin model.* (1) A covered swap entity must obtain the prior written approval of [Agency] before using any initial margin model to calculate the initial margin required in this [part].

(2) A covered swap entity must demonstrate that the initial margin model satisfies all of the requirements of this section on an ongoing basis.